

1 **BRETT O'NEIL**  
2 **JESSE LASLOVICH**  
3 Special Assistant Attorneys General  
4 Special Deputy Flathead County Attorneys  
5 840 Helena Avenue  
6 Helena, MT 59601  
7 (406) 444-2040

2011 JAN -6 PM 12:38

8 *Attorneys for State of Montana*

9 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

10 STATE OF MONTANA, )  
11 )  
12 Plaintiff, )

13 vs. )

14 RICHARD "RICK" SCHAEFFER )  
15 Defendant. )

Cause No. DC-11-015B

**MOTION AND AFFIDAVIT FOR ORDER  
GRANTING LEAVE TO FILE  
INFORMATION DIRECTLY  
IN DISTRICT COURT**

KATHERINE R. CURTIS

16 STATE OF MONTANA )  
17 :ss.  
18 County of Lewis and Clark )

19 BRETT O'NEIL, being first duly sworn, upon oath, deposes and states:

- 20 1. That he is the duly appointed, qualified, and acting Special Deputy County Attorney  
21 in and for the county of Flathead and the state of Montana herein and acting in this capacity  
22 he is familiar with the investigation relating to the above-named Defendant.  
23 2. That the Defendant has committed offense in Flathead County, as hereinafter set forth  
24 and, based upon information developed through an investigation conducted by a criminal  
25 justice investigator, this Court should grant leave to file an Information directly in District  
26 Court pursuant to Mont. Code Ann. § 46-11-201, charging the Defendant with the offense of:  
27  
28

1           e.     Defendant admitted to working on the roof at some point after Schweigert  
2 Roofing had completed its work.

3           f.     On or about December 15, 2008, Defendant filed a claim with Flathead  
4 Insurance, which was forwarded to Penn-American Insurance Company, alleging that  
5 Schweigert Roofing had installed a roof which was now leaking.  
6

7           g.     On or about May 8, 2009, Adjustor David Muzzanna inspected and  
8 photographed the home of the Defendant on behalf of Penn-American Insurance Co. The  
9 Defendant was present at the time of the adjustment.

10          h.     On or about May 8, 2009, Defendant told Adjustor Muzzanna in a recorded  
11 statement:  
12

- 13               1.     Defendant did not like the installation of the original metal roof.
- 14               2.     That the roof had not leaked prior to the installation by Schweigert  
15 Roofing.
- 16               3.     Defendant hired Schweigert to replace the roof.
- 17               4.     The roof began leaking after Schweigert completed the work.  
18

19          i.     On or about May 8, 2009, Defendant said nothing to Adjustor Muzzanna  
20 about the work Defendant had done on the roof.

21          j.     On or about October 6, 2009, Adjustor David Muzzanna submitted a final  
22 report to Penn American that the damage to the Defendant's property was \$25,079.97 based  
23 on Defendant's assertions that the roof had not leaked previously and that Schweigert  
24 Roofing had redone the entire roof. This amount was paid to the Defendant.  
25  
26  
27  
28

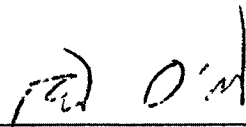
1 k. On or about October 14, 2010, Adjustor Muzzanna told the CSI that had he  
2 known of the prior claims of a leaky roof and the changes made to the roof line, he would  
3 have denied the claim.

4 l. In a recorded interview dated November 22, 2010, Defendant said it was not  
5 his responsibility to say the roof had leaked prior to Schweigert Roofing's work. He also  
6 claimed it was not his responsibility to assess old damage versus new damage.  
7

8 m. Based on the Defendant's misrepresentations, Penn-American Insurance Co.  
9 paid claim of \$25,079.97. Defendant has not returned the money.

10 WHEREFORE, the undersigned moves this Court for an Order granting leave to file an  
11 Information directly in District Court charging the above-named Defendant with the felony offense  
12 of INSURANCE FRAUD by THEFT by presenting to an insurer a written or oral statement  
13 containing false, incomplete or misleading information concerning facts in support of a claim for  
14 payment or other benefit as more particularly set forth herein.  
15

16 DATED this 4<sup>th</sup> day of JANUARY, 2011.  
17

18  
19   
20 BRETT O'NEIL  
21 Special Assistant Attorney General  
22 Special Deputy Flathead County Attorney

23  
24 SUBSCRIBED and SWORN to before me this 4<sup>th</sup> day of January, 2011, by Brett O'Neil.

